



Department of Energy
Acquisition Regulation

No. 94-6
Date June 1, 1994

ACQUISITION LETTER

AUTHORITY

This Acquisition Letter is issued by the Procurement Executive pursuant to a delegation from the Secretary and under the authority of the Department of Energy Acquisition Regulation subpart 901.301-70.

CONTENTS

CITATION

DEAR 905.202

TITLE

Exceptions to Synopsis of Proposed
Contract Actions

- I. Purpose. The purpose of this Acquisition Letter is to provide a determination and findings authorizing a waiver to the usual requirement to synopsise in the Commerce Business Daily proposed contract actions expected to be awarded to the National Academy of Sciences.
- II. Background. A similar determination and findings was provided in Acquisition Letter 89-2. It expired September 30, 1993.
- III. Guidance. The attached class determination and findings provides an exception to the usual Federal Acquisition Regulation subpart 5.2 requirement for public notice in the Commerce Business Daily of proposed contract actions with the National Academy of Sciences. This determination applies only to acquisitions the principal purpose of which is a study, research, investigation, or advice. This determination does not apply to the requirement for synopsis of contract awards in accordance with Federal Acquisition Regulation subpart 5.3. The contracting officer shall insert a copy of the attached class determination and findings in the contract file for each acquisition using the authority.

Because contracts with the National Academy of Sciences are likely to involve support of program evaluations and management functions, special care should be taken to ensure that the Academy is not tasked to perform an inherently Governmental function.

- IV. Effective Date. This Acquisition Letter is effective on the date of the Acquisition Letter.
- V. Expiration Date. This Acquisition Letter expires on June 1, 1997, unless cancelled sooner.

Department of Energy
Class Determination and Findings

Under authority of section 8(g)(3) of the Small Business Act, 15 U.S.C. 637(g)(3), and section 18(c)(3) of the Office of Federal Procurement Policy Act, 41 U.S.C. section 416(c)(3), the following findings and determination are made:

Findings

1. Public Law 98-577

Among the purposes of Public Law 98-577 are the improvement of small business access to Federal procurement information and enhanced competition in the Federal acquisition process by providing advance public notices of contract opportunities through publication in the Commerce Business Daily.

To achieve this purpose, Federal departments are required to publish notice of procurement actions in the Commerce Business Daily 15 days prior to issuance of solicitations and to close competition no sooner than 30 days later. The public notice invites prospective contractors to identify themselves and their capabilities for situations in which the Government identifies an anticipated sole source as well as for competitive opportunities.

Public Law 98-577 allows exemption of acquisitions from the advance public notice requirement whenever it is determined in writing by the head of the executive agency, after consultation with the Administrator for Federal Procurement Policy and the Administrator of the Small Business Administration, that to publish such advance notice before issuing a solicitation is neither appropriate nor reasonable.

2. National Academy of Sciences (the Academy) - Charter and Purpose

The Academy was chartered by the U.S. Congress under the Act of Incorporation approved by President Lincoln on March 3, 1863. The National Research Council, the National Academy of Engineering and the Institute of Medicine were established in 1916, 1964 and 1970, respectively, as specialized operating entities of the Academy. The Academy, including the later added entities, enjoy a unique and special relationship with the Government.

The essence of that relationship is defined in the 1863 Act of Incorporation which requires the Academy to "...investigate, examine, experiment and report upon any subject of science or art, the actual expense of such . . . to be paid from appropriations which may be made for the purpose"

3. Operations of the National Academy of Sciences

The Academy operates through a variety of both standing and ad hoc commissions, boards and committees furnishing advice and guidance on science and technology. The Academy receives no fee or profit.

Members of the commissions and other such groups are selected from the nation's most eminent scholars, and that selection is made in such a manner to

War II; and sponsored committees on nuclear waste isolation, solid state sciences, geosciences and major facilities for materials science.

7. Lack of Other Sources

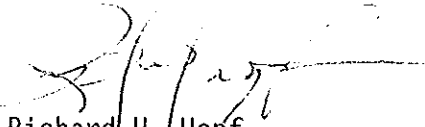
No business in America, small or large, has access to the quality of scientific and engineering expertise available through the Academy; can furnish the services of eminent scholars with no personal remuneration and no organizational fee or profit; can approach investigations and evaluations from a totally public interest perspective; and, most importantly, can furnish the degree of unparalleled acceptance associated with the advice, findings, or investigations of the Academy. The characteristics of the advice, guidance, and investigations furnished by the Academy are vital to the decision-making process of the Department and are unobtainable as a whole from the private sector.

It is in the public interest that the decision-making process of the Department of Energy receive independent advice of unparalleled objectivity, of the highest quality, and possessing an inherent degree of acceptability within and among the scientific community. It is impractical to synopsize the acquisition of such scientific advice and guidance when such advice is uniquely available from the Academy.

Determination

Based on the foregoing findings, within the scope of authority delegated to me as Deputy Assistant Secretary for Procurement and Assistance Management, and after consultation with the Administrator of the Office of Federal Procurement Policy and the Administrator of the Small Business Administrator, I determine as follows:

1. It is neither appropriate nor reasonable to publish a synopsis notice in the Commerce Business Daily before issuing a solicitation for a proposed contract action with the National Academy of Sciences.
2. This determination applies only to acquisitions the principal purpose of which is a study, research, investigation, or advice.
3. This determination expires on June 1, 1997.


Richard H. Hopf
Deputy Assistant Secretary for
Procurement and Assistance Management